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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

GABRIEL O. ARK-MAJIYAGBE,

Plaintiff and Appellant,

v.

CRAIG M. GANDY, AS TRUSTEE, ETC. et al.,

Defendants and Respondents.

C075313

(Super. Ct. No. CV35233)

Plaintiff Gabriel O. Ark-Majiyagbe lost his real property in a nonjudicial foreclosure. He also was forced off the property by an unlawful detainer judgment. As a part of that action, the trial court and its appellate division necessarily determined the foreclosure sale was valid.

Plaintiff brought this action for wrongful foreclosure. Days before trial, he sought leave to file a third amended complaint alleging new causes of action arising out of fraud in the inducement of the note and deed of trust. The trial court denied his request as

untimely. Following trial, the court entered judgment against plaintiff on his wrongful foreclosure claims, ruling they were barred under the doctrine of collateral estoppel.

Plaintiff contends the trial court abused its discretion when it denied him leave to file the third amended complaint and when it barred his action based on collateral estoppel.

We affirm the judgment.

FACTS AND PROCEEDINGS

The facts are not in dispute. Plaintiff borrowed \$600,000 from defendants in 2007.¹ The loan was secured by a deed of trust encumbering plaintiff's property. Plaintiff fell into arrears in 2008. Defendants foreclosed and acquired the property at the trustee's sale.

Plaintiff did not surrender the property, so defendants filed an unlawful detainer action against him in 2009. The trial court found in favor of defendants and entered judgment against plaintiff. Plaintiff appealed, contending defendants were not entitled to possession because the foreclosure process and trustee's sale were invalid. The appellate division of the Calaveras County Superior Court affirmed the judgment. Plaintiff petitioned this court to transfer the appeal and for writ relief. We denied the petitions in 2011. The judgment in the unlawful detainer action is final.

Defendants evicted plaintiff from the property. The sheriff served a writ of possession on plaintiff, informing him he had 15 days to remove his personal property. He failed to remove his property, and defendants sold it.

Meanwhile, on November 17, 2008, before defendants filed their unlawful detainer action, plaintiff filed this action against defendants for wrongful foreclosure. He

¹ Defendants and respondents are the Gandy Revocable Trust of April 16, 2003, by and through Craig M. Gandy, Trustee; Robert J. Bunbury; and Terri Noel Bunbury.

filed his second amended complaint on October 20, 2009, while the appeal in the unlawful detainer action was pending. In addition to wrongful foreclosure, plaintiff alleged causes of action for violations of federal debt collection statutes during the foreclosure process, unspecified breaches of the deed of trust, breach of the implied covenant of good faith and fair dealing by wrongfully foreclosing, and negligence and negligence per se committed in the foreclosure process. He alleged the defendants' selling of his personal property constituted part of his negligence claims. He sought damages, declaratory relief, imposition of a constructive trust, and an order setting aside the trustee sale.

Although multiple attempts were made, service on all of the defendants was not completed until February 2010. The trial court continued case management conferences while the unlawful detainer action was pending, but in February 2011, it set a trial date of July 13, 2011, a date by which judgment in the unlawful detainer action would have become final.

Over the next two years, the court continued the trial date many times for different reasons. Two judges recused themselves and plaintiff disqualified another. Plaintiff's attorney quit the practice of law, forcing plaintiff to retain new counsel. Defendants filed a motion for summary judgment, contending all of plaintiff's causes of action in the second amended complaint were barred by collateral estoppel. The trial court denied the motion. In late 2012, plaintiff underwent dual knee replacement surgery that resulted in serious health complications. Ultimately, trial was set for May 16, 2013, approximately four years and six months after plaintiff had filed his original complaint.

On May 9, 2013, seven days before trial, plaintiff applied to the court for leave to file a third amended complaint and to continue trial. The proposed complaint added three new defendants. It also added four new causes of action: to quiet title in order to set aside a wrongful foreclosure, conversion from refusing to return plaintiff's personal property, intentional infliction of emotional distress, and unfair competition. The unfair

competition claim alleged defendants made misrepresentations in the inception of the loan in 2007.

The trial court heard plaintiff's application on May 13, 2013, three days before trial. It denied the motion to amend the complaint as untimely and denied the request to continue the trial.

Trial commenced on May 16, 2013. Granting an in limine motion by defendants, the court ruled plaintiff was barred by collateral estoppel from proving any irregularity in the foreclosure process, as those issues had been decided in the unlawful detainer action. However, plaintiff was not barred from proving what was not barred by collateral estoppel.

Plaintiff testified. When plaintiff's counsel asked plaintiff why he chose to obtain the loan from defendants as opposed to other lenders, defense counsel objected. Counsel argued the testimony was irrelevant, as plaintiff did not allege any claims arising from the formation of the loan in his second amended complaint. Plaintiff's counsel conceded the complaint did not allege fraud in the inception. The court thus ruled it would not allow plaintiff to prove fraud in the inception.

The court ultimately found against plaintiff on each cause of action and entered judgment in favor of defendants.²

² At trial, plaintiff claimed he was wrongfully dispossessed of his personal property after service of the writ of possession. The trial court ruled against plaintiff on that claim. He does not challenge that ruling here.

DISCUSSION

I

Denial of Leave to Amend

Plaintiff contends the trial court abused its discretion when it denied him leave to file a third amended complaint. We disagree. Allowing plaintiff to amend so close to trial would have prejudiced defendants, and the new causes of action he sought to allege were barred by the statute of limitations.

The second amended complaint was based on wrongful foreclosure. The third amended complaint plaintiff hoped to file sought recovery not only for wrongful foreclosure but also for fraud in the inception of the loan by defendants and four new defendants. It alleged that in January 2007, new defendant Marc Palos, agent of new defendant Village Financial Group, induced plaintiff to rescind a five-year loan from another lender and accept a loan from defendants that had a lower interest rate with a five-year term. Palos pressured plaintiff to rescind the other loan and execute the new loan documents. Plaintiff signed them under duress, not realizing the note he signed called for a one-year term. Plaintiff did not realize he signed a one-year note until October 2007. He alleged this fraud was unfair competition under Business and Professions Code section 17200 and caused him emotional distress.

Plaintiff asserts the trial court abused its discretion when it denied his request as untimely. He argues the court had good cause to grant leave. The delay in filing his motion was reasonable due to the loss of his attorney in July 2012, the retention of a new attorney in October 2012, and his health conditions following surgery in late 2012. He asserts the statute of limitations would not have barred the amendments, as they related back to the second amended complaint. He also contends defendants would not be prejudiced if the court allowed him to amend, as the motion was timely, the amendments related back, opening up discovery could lead to settlement discussions, and the addition

of other defendants would spread the liability among more parties. According to plaintiff, the only prejudice defendants would suffer would be “the prejudice of having to respond to a much better pleaded complaint”

We disagree with his arguments.

“ ‘ ‘ ‘[T]he trial court has wide discretion in allowing the amendment of any pleading [citations], [and] as a matter of policy the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown. [Citations.]’ ” [Citation.] Nevertheless, it is also true that courts generally should permit amendment to the complaint at any stage of the proceedings, up to and including trial. [Citations.] But this policy applies “ ‘only “[w]here no prejudice is shown to the adverse party.” ’ ” [Citation.] Moreover, “ ‘ “even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial.” ’ ” [Citations.]’ ” (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 102, quoting *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175.)

Prejudice exists where the proposed amendment is offered untimely and without excuse for the delay, and it would burden the opposing party with a delay in trial, the need to conduct additional discovery and trial preparation, and the resultant additional costs. (See *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486-487.) “Where the trial date is set, the jury is about to be impaneled, counsel, the parties, the trial court, and the witnesses have blocked the time, and the only way to avoid prejudice to the opposing party is to continue the trial date to allow further discovery, refusal of leave to amend cannot be an abuse of discretion.” (*Id.* at p. 488.)

In addition, a trial court may deny leave to amend if the statute of limitations will bar the new claims. “The relation-back doctrine deems a later-filed pleading to have been filed at the time of an earlier complaint which met the applicable limitations period, thus avoiding the bar. In order for the relation-back doctrine to apply, ‘the amended complaint must (1) rest on the same general set of facts, (2) involve the same injury, and

(3) refer to the same instrumentality, as the original one. [Citations.]’ (*Norgart v. Upjohn Co.* [(1999)] 21 Cal.4th [383], 408-409.)” (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1278, italics omitted.) If the relation-back doctrine does not apply, the statute of limitations will not be tolled by the filing of the original complaint.

This rule is stricter if the amended complaint adds a new defendant. “As a general rule, ‘an amended complaint that adds a new defendant does *not* relate back to the date of filing the original complaint[,], and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed.’” (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176, italics added.)” (*Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) 124 Cal.App.4th 1497, 1503.) An exception to this rule applies when a new defendant is substituted under Code of Civil Procedure section 474 “for a fictitious Doe defendant named in the original complaint as to whom a cause of action was stated in the original complaint.” (*Woo*, at p. 176.)

Applying these rules, we hold the trial court did not abuse its discretion in refusing to grant leave to amend. Allowing plaintiff to amend his complaint by adding different causes of action and new defendants so close to trial would have prejudiced defendants. The trial court undoubtedly would have continued the trial to allow defendants to conduct discovery on the new allegations and prepare again for an expanded trial. While some of the delay in getting to trial arose from plaintiff’s health, there is no stated reason why plaintiff could not have sought to allege the new causes of action earlier.

More significantly, the new causes of action plaintiff alleged in the third amended complaint do not relate back to the prior complaint and are barred under the statute of limitations. The second amended complaint arose from the foreclosure, not the formation of the loan. The causes of action in the third amended complaint based on fraud in the inception are different from, and not based on, the same general set of facts alleged in the second amended complaint, nor do they involve the same injury or instrumentality. The new allegations do not relate back.

We recognize the original and first amended complaints alleged fraud in the inducement as a basis for the court to order an accounting. Plaintiff, however, abandoned this claim by not alleging it in his second amended complaint. “[A]n amended complaint supersedes all prior complaints.” (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130.) Once an amended complaint has been filed, the previous complaint ceases to function as a pleading. (*Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 215.)

Because plaintiff abandoned a cause of action based on fraud in the inducement, he could not plead it in the third amendment complaint and expect the statute of limitations to apply based on the filing date of the original complaint. “We know of no method by which life is breathed into the old complaint merely because the new one contains defects that cause it to be stricken.” (*Anmaco, Inc. v. Bohlken* (1993) 13 Cal.App.4th 891, 901.) Because plaintiff abandoned the claim, it is as if it never existed. Plaintiff could plead a cause of action for fraud in the inducement only if it did not violate the statute of limitations as of the date the third amended complaint was filed.

The statute of limitations for a claim of fraud is three years, but for unfair competition under Business and Professions Code section 17200, it is four years. (Code Civ. Proc., § 338, subd. (d); Bus. & Prof. Code, § 17208.) The claim accrues upon the occurrence of the last element essential to the cause of action unless common law accrual rules apply, such as accrual upon discovery. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1196-1197.) Assuming for purposes of argument that plaintiff’s cause of action accrued upon his discovery of the fraud, the latest possible date, the limitations period began to run in October 2007 when plaintiff first noticed the note had only a one-year term. The statute of limitations thus barred plaintiff from seeking recovery for unfair competition after October 2011. Plaintiff, however, sought to file his third amended complaint in 2013. Any cause of action based on fraud in the inception was time barred by then.

Plaintiff's naming of new defendants also does not relate back to the original complaint, and the statute of limitations bars their being made parties in the action. (*Hawkins v. Pacific Coast Bldg. Products, Inc.*, *supra*, 124 Cal.App.4th at p. 1503.) There is no indication the new defendants were substituted for fictitious Doe defendants. Because filing the third amended complaint would prejudice defendants, and because its new causes of action were time barred, the trial court was well within its discretion to deny leave to file the new pleading.

II

Collateral Estoppel

Plaintiff contends the trial court erred by ruling his causes of action in the second amended complaint were barred by collateral estoppel. The court held the unlawful detainer action necessarily decided the validity of the foreclosure, and collateral estoppel barred plaintiff from re-litigating the issue. Plaintiff claims the summary nature of the unlawful detainer trial precluded him from having a full and fair opportunity to litigate the validity of the foreclosure.

Alternatively, plaintiff collaterally attacks the unlawful detainer judgment. He asserts the trial court in that proceeding lacked subject matter jurisdiction because defendants lacked standing to bring the action; they had not duly perfected title in plaintiff's property due to the invalid foreclosure proceedings. Those proceedings were invalid, plaintiff contends, because a substitution of trustee was not formally acknowledged, notice was not provided of the trustee's sale, and the trustee's deed of sale, offered as evidence in the unlawful detainer action, had not been recorded. Plaintiff also contends the unlawful detainer court lacked jurisdiction because the three-day notice defendants gave him to vacate the property was defective.

We disagree with plaintiff's arguments. His causes of action arising from the foreclosure are barred under collateral estoppel, and the unlawful detainer court did not lack subject matter jurisdiction.

"Collateral estoppel is an aspect of the doctrine of res judicata. Under collateral estoppel, a prior judgment between the same parties operates as an estoppel or conclusive adjudication as to those issues that were *actually litigated* and *necessarily determined* in the prior action." (*Groves v. Peterson* (2002) 100 Cal.App.4th 659, 667, original italics.)

" 'When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated An issue may be submitted and determined on a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, a motion for summary judgment . . . a motion for directed verdict, or their equivalents, as well as on a judgment entered on a verdict.' " (*Barker v. Hull* (1987) 191 Cal.App.3d 221, 226, quoting Rest.2d Judgments, § 27, com. d., p. 255.)

The validity of defendants' title was actually litigated and necessarily determined in the unlawful detainer action. Defendants sought relief under Code of Civil Procedure section 1161a, which authorized them to bring their action based on their having perfected title obtained from the foreclosure. As that statute required, defendants pleaded they acquired title to plaintiff's property by means of the trustee's sale and that the sale was valid. Although the trial court did not issue findings of fact, it necessarily found defendants lawfully obtained and perfected title to the property by means of the foreclosure. Without making that finding, the court could not have granted defendants relief.

Because the validity of defendants' title was litigated in the unlawful detainer action, judgment in that action operated as collateral estoppel in this action. " '[A] judgment in unlawful detainer usually has very limited res judicata effect and will not prevent one who is dispossessed from bringing a subsequent action to resolve questions

of title’ (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255 (*Vella*).) ‘A qualified exception to the rule that title cannot be tried in unlawful detainer is contained in Code of Civil Procedure section 1161a, which extends the summary eviction remedy beyond the conventional landlord-tenant relationship to include certain purchasers of property’ (*Ibid.*) ‘[Code of Civil Procedure] [s]ection 1161a provides for a narrow and sharply focused examination of title. To establish that he is a proper plaintiff, one who has purchased property at a trustee’s sale and seeks to evict the occupant in possession must show that he acquired the property at a regularly conducted sale and thereafter “duly perfected” his title.’ (*Ibid.*; Code Civ. Proc., § 1161a, subd. (b)(3).) Accordingly, where, as here, an unlawful detainer action is brought pursuant to Code of Civil Procedure section 1161a, subdivision (b)(3), title is at issue. ‘Applying the traditional rule that a judgment rendered by a court of competent jurisdiction is conclusive as to any issues necessarily determined in that action, the courts have held that subsequent fraud or quiet title suits founded upon allegations of irregularity in a trustee’s sale are barred by the prior unlawful detainer judgment.’ (*Vella, supra*, at p. 256; see *Bliss v. Security-First Nat. Bank* (1947) 81 Cal.App.2d 50, 58-59 [stipulated judgment arising from unlawful detainer action brought under Code Civ. Proc., § 1161a held to bar subsequent claim for quiet title].)’ (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1010-1011.)

Plaintiff contends the unlawful detainer action should not collaterally estop him from challenging the foreclosure sale because the action did not provide him with a full opportunity to litigate the sale’s validity. The unlawful detainer complaint was heard in a summary proceeding lasting only two hours, no court reporter was present, and no findings of fact or conclusions of law accompanied the court’s form judgment.

The record, however, indicates plaintiff fully argued against the sale’s validity in the unlawful detainer action. In his answer, plaintiff asserted as an affirmative defense that the foreclosure sale was illegal. His defense was based entirely on the foreclosure sale’s validity. In his trial brief, he argued defendants’ title was defective because the

trustee failed to notice the sale and failed to notify him of a substitution of trustee, all in violation of the statutes governing nonjudicial foreclosures. Plaintiff's post-trial brief relied exclusively on the same alleged violations of the statutes governing nonjudicial foreclosures.

Plaintiff's appeal to the superior court's appellate division was based solely on irregularities in the foreclosure sale. The argument in his 52-page opening brief attacked exclusively the validity of the foreclosure sale process. The argument in his 21-page closing brief did the same. His petition for rehearing repeated the arguments.

Plaintiff's petitions to this court raised the same arguments. In his petition to transfer the case and his petition for writ relief, plaintiff argued the judgment against him in the unlawful detainer action should be reversed because the trial court erroneously concluded the foreclosure sale was valid. He argued the sale was not valid because defendants violated statutory provisions governing nonjudicial foreclosure sales.

Although there was no reporter at the trial, plaintiff informed us what happened there in one of his declarations. He stated his attorney argued "that the foreclosure sale of my property was not proper for several reasons and that the [defendants] did not get good title to my land so they could not evict me and my family. [¶] Among the arguments was the Substitution of Trustee that was recorded prior to the sale was not properly acknowledged, and was therefore void [¶] He further argued that [the trustee] not [being] the trustee of record had no authority to sell my property and convey title to the beneficiaries." The lack of a reporter thus did not prejudice plaintiff, and, as his significant briefing shows, he had sufficient time to make, and did make, his arguments against the sale's validity fully.

We agree with the trial court in this action that the unlawful detainer action went "right to the heart" of plaintiff's unlawful foreclosure claims here. The "issue was litigated. It was argued. It was decided by the judge, and it was a key issue in that

unlawful detainer action.” Accordingly, collateral estoppel bars plaintiff from raising those claims in this action.

Plaintiff attempts to get around this bar by asserting the unlawful detainer court lacked subject matter jurisdiction, voiding its judgment. He argues the court lacked jurisdiction because defendant “had not proven” their title was duly perfected. In particular, plaintiff asserts he discovered during the post-trial briefing period that the trustee’s deed admitted into evidence in the unlawful detainer trial was not recorded. This irregularity, he claims, meant defendants had not perfected title by the time of trial and thus did not have standing in the unlawful detainer action. He argues this lack of standing stripped the court of subject matter jurisdiction to hear the matter.

Plaintiff misunderstands the doctrine of subject matter jurisdiction. “Although the term ‘jurisdiction’ is sometimes used as if it had a single meaning, we have long recognized two different ways in which a court may lack jurisdiction. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660 (*American Contractors*)).) A court lacks jurisdiction in a fundamental sense when it has no authority at all over the subject matter or the parties, or when it lacks any power to hear or determine the case. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) If a court lacks such ‘ “fundamental” ’ jurisdiction, its ruling is void. (*People v. Lara* (2010) 48 Cal.4th 216, 225.) A claim based on a lack of fundamental jurisdiction may be raised for the first time on appeal. (*Ibid.*)

“Even when a court has fundamental jurisdiction, however, the Constitution, a statute, or relevant case law may constrain the court to act only in a particular manner, or subject to certain limitations. . . . When a trial court has fundamental jurisdiction but fails to act in the manner prescribed, it is said to have acted ‘in excess of its jurisdiction.’ ([*American Contractors, supra*, 33 Cal.4th] at p. 661.) Because an ordinary act in excess of jurisdiction does not negate a court’s fundamental jurisdiction to hear the matter altogether (2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 285, p. 891), such a

ruling is treated as valid until set aside. (*People v. Tindall* (2000) 24 Cal.4th 767, 776, fn. 6.)” (*People v. Ford* (2015) 61 Cal.4th 282, 286-287.)

There can be no dispute the trial court had fundamental jurisdiction to hear and try defendants’ unlawful detainer complaint. Whether defendants had perfected titled was an element of proof, not an issue of fundamental jurisdiction.

Plaintiff’s argument in effect asserts the unlawful detainer court lacked fundamental jurisdiction because its decision finding the foreclosure sale valid was wrong and not supported by the evidence. But if a trial court has power and authority to hear a cause, as the trial court did here, then any erroneous rulings of fact or law, or improper admission of evidence that does not violate a fundamental right, are errors *within* jurisdiction, and they are not grounds for collateral attack on the judgment. (2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, §§ 287, 309, pp. 894, 921.)

“At times the primary function of the trial court is to determine questions of fact. Even though such findings be utterly contrary to the evidence, the decree is not for that reason void. Similarly the court’s defiance or ignorance of an express statute or of the decisions of the courts of last resort does not render its judgment a nullity. The composition of a judgment is derived from an attempt to apply the law to the facts in question. If the court decides the law and the facts both wrong, or the facts right and the law wrong, or the law right and the facts wholly wrong, it is still a final judgment if the time for appeal elapses. The fact that a court shall decide erroneously does not affect the validity or the finality of a judgment any more than to decide correctly. The duty of the court in every controversy or proceeding is to decide right. Such duty implies that the court may decide wrong. Its jurisdiction is not defeated or limited by a wrong decision.” (*Estate of Gardiner* (1941) 45 Cal.App.2d 559, 563.)

Legal errors committed by a court “within its jurisdiction can be corrected only on direct attack, as by appeal; and when the opportunity for direct attack is gone, the judgment can no longer be questioned.” (*In re Estate of Keet* (1940) 15 Cal.2d 328, 335.)

Whether the unlawful detainer court's judgment is right or wrong, it is final. The judgment finding the trustee sale valid is thus beyond attack. It bound the trial court in this action and is binding on us under the doctrine of collateral estoppel. The trial court did not abuse its discretion finding the second amended complaint barred under that doctrine.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendants. (Cal. Rules of Court, rule 8.278(a).)

HULL, J.

We concur:

RAYE, P. J.

HOCH, J.